

Appl. No. 10/562,910
Amdt. dated May 6, 2009
Reply to Final Office action of March 17, 2009

REMARKS

Claims 12-31 remain in this application.

The examiner's allowance of claims 15-20 and 24-28 is gratefully acknowledged.

THE FINALITY OF THE OFFICE ACTION WAS PREMATURE

Making the Office Action of March 17, 2009 a Final rejection was inappropriate. In this Office action claim 30 was acted upon for the first time, it was not acted on in the first Office action. Not only was claim 30 not acted on, but there are no indications in the first Office action that there was an intention of rejecting claim 30. Such an indication, for example, could have been that if a claim which is dependent on claim 30 was rejected, it could be inferred that the examiner meant to also reject claim 30. But there is no such implication anywhere in the first Office action.

Not only that, but for box 6 of the form page, of the first Office action, the examiner listed claims 12-14, 21-23, 29 and 31 as being rejected. This sentence seems to imply that claim 30 was specifically and intentionally left out of the rejections.

Since claim 30 received its first rejection in the present, Final Office action, the examiner's action of making this action Final was premature, and the finality of that action should be rescinded.

Thus, it is requested that the finality of this Office Action be withdrawn. This in turn would mean that claim 12, as amended in this present amendment, should be entered and acted on in the next Office action.

For the examiner's information a Petition to Withdraw of the Finality of the Previous Office Action on this matter has been filed concurrently herewith.

PRIOR ART ISSUES

The examiner's reading of Dombek et al for the prior art rejection of claims 12-14, 21-23 and 29-31 is inappropriate since Dombek et al does not disclose a pressure holding valve. A valve mechanism is a mechanism which opens and closes, and the structure of Dombek et al does not do this. Dombek et al is in fact a manually actuated pump; it does not open and close anything as a valve is well understood to do.

Further, the device as recited in claim 12 has a first connection and a second connection. Dombek et al has only one connection which Dombek et al recites as inlet/outlet 44. Structure 44 of Dombek et al provides for both the inlet and outlet for his pump.

The examiner has misread the portion connected to cap 46 as the first connection of Dombek et al, and the connection 82 as the second connection. The structure as disclosed by Dombek et al does not teach a connection at 46 which is **connectable to a low-pressure region**. The area around 46 of Dombek et al is completely sealed, and the seals make sure that this area is not connected to anything. Thus the examiner's reading of the first connection cannot be correct.

The examiner has also indicated that element 70 of Dombek et al is a closing element. However, Dombek et al indicates that 80 is a seal between pump pistons 54 and 56, so that element 70, in cooperation with seal 80, does close the axial bore 60. But the examiner is clearly stretching the reference beyond its actual disclosure by calling element 70 a closing element.

Element 70 does not open and close anything as a valve closing element such as applicant's must do. The only function which element 70 of Dombek et al accomplishes is, with the aid of seals 80, to seal between pistons 54 and 56.

Even though, it is believed that the examiner's reading of Dombek et al does not read on the structure as previously recited in claim 12, claim 12 has nevertheless been amended to recite that the closing element "alternatively opens and closes the through opening". This gives the claim a definite recitation that the closing element has an even further function which the structure of Dombek et al clearly does not have.

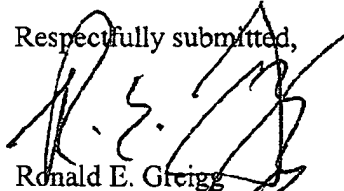
And still further, the examiner reads element 49 of Dombek et al as a pressure relief device, but it is not. Element 49 of Dombek et al is the manually operated plunger for the pump of Dombek et al. It does not open or close any openings, and thus it does not relieve any pressure. In fact, the only function of element 49 of Dombek et al is manual operation to increase the pressure. It clearly does not relieve any pressure.

Even though the examiner's rejection is not appropriate as shown above, claim 12 has nevertheless been further amended with the recitation that the closing element is operable "to alternatively open and close the through opening". By way of comparison, and looking at the examiner's rejection wherein he calls element 70 a closing element, since element 70 clearly does not open and close, the present change to claim 12 even further precludes the examiner from reading the element 49 of Dombek et al as a pressure relief device such as recited in claim 12.

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For the above reasons, entry of the amendment and allowance of the claims are
courteously solicited.

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/562,910 Confirmation No. 3842
Applicant : Hans BREKLE
Filed : March 29, 2006
TC/A.U. : 3747
Examiner : K. Coleman

Docket No. : R.305588
Customer No. : 02119

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Date: May 6, 2009

PETITION UNDER 37 C.F.R. § 1.181
REQUESTING WITHDRAWAL OF THE
FINALITY OF THE PREVIOUS OFFICE ACTION

Sir:

Applicant requests that the examiner's decision to hold the action of March 17, 2009 to be a Final rejection be reversed.

Making the Office Action of March 17, 2009 a Final rejection was inappropriate. In this Office action claim 30 was acted upon for the first time, it was not acted on in the first Office action.

Not only was claim 30 not acted on, but there are no indications within the first Office action that there was an intention of rejecting claim 30. For example, if a claim which is dependent on claim 30 had been rejected, it could be inferred that the examiner meant to also

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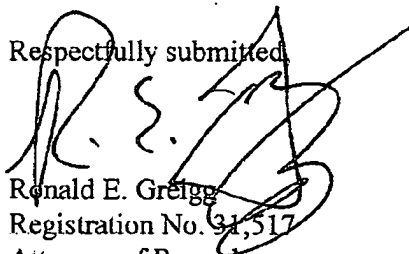
reject claim 30. But there is no such implication anywhere in the first Office action.

To the contrary, box 6 of the form page of the first Office action, which lists the rejected claims, listed claims 12-14, 21-23, 29 and 31 as being rejected. This sentence seems to imply that claim 30 was specifically and intentionally left out of the rejections.

Since claim 30 received its first rejection in the Office action of March 17, 2009, the examiner's action of making that action Final was premature, and the finality of that action should be rescinded.

The Commissioner is authorized to charge payment of any appropriate petition fee, or any other necessary fees in connection with this communication to Deposit Account Number 07-2100.

Respectfully submitted,


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